

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 422 of 1998

JM PATEL

Versus

ADDL CHIEF SECRETARY

Appearance:

MR BR KYADA for Petitioner

CORAM : MR.JUSTICE S.K.KESHOTE

Date of Order: 04/02/98

C.A.V. ORDER

Heard the learned counsel for the petitioner.

2. The petitioner, an Office Superintendent, serving in the State Aid Cell at Gandhinagar, filed this special civil application before this Court and prayed for the following relief:

B) Your Lordships may be pleased to issue a writ or order or writ or appropriate writ or direction directing the respondents to implement the order dated 26th August, 1991 and/or direct the respondents to issue promotion to the petitioner on the post of Administrative Officer, right from 1991 and as per Seniority; and other benefits under the said post of promotion in the favour of the petitioner, and also award the special costs, in favour of the petitioner.

3. Under the order dated 26th August, 1991, the petitioner has been promoted to the post of Administrative Officer and he was posted in the office of I.G. Hospital, Jamnagar. This order came to be suspended under the order dated 7-10-1991. The petitioner has filed this special civil application before this Court on 22nd January, 1998 i.e. after more than six years from the date of the order of promotion as well as the suspended order of promotion. Prayer of the petitioner for direction to the respondents to implement

the order dated 26th August, 1991 deserves no acceptance for the reasons firstly, that this prayer has been made after more than six years from the date of the order and secondly, that order has been admittedly put under suspension by the order dated 7th October, 1991. The petitioner is not challenging the order under which the order of promotion is placed under suspension and without challenge to that order otherwise also this writ petition is not maintainable. However, during the course of arguments, the learned counsel for the petitioner has, though there is no prayer for quashing of the said order, challenged the order under which the order of the promotion of the petitioner has been placed under suspension but that challenge also suffers from delay and laches. Learned counsel for the petitioner is unable to give any explanation good, bad or indifferent why the order of the respondents placing the order of promotion of the petitioner under suspension has not been challenged for all these years. The contention has been made that the order has been placed under suspension as some stay order has been granted by the Civil Court. Though sufficient evidence has not been produced in this respect on the record but even if it is taken that some stay order has been granted by the Civil Court, the learned counsel for the petitioner, on being asked by the Court is unable to say why the petitioner who was otherwise affected by the stay order, has not taken any steps to get that stay order vacated.

4. Learned counsel for the petitioner admitted that the petitioner has not taken any steps to get himself impleaded as party to the proceedings before the Civil Court. From the facts which have come on record, an inference can be drawn that the petitioner was also happy with the suspension of the order of promotion as he does not want to go out of Ahmedabad. Now when the petitioner is going to retire this year, he started to make his claim for promotion under the order dated 26th August, 1991 which has been placed under suspension under the order dated 7th October, 1991 without challenging the order of suspension. In view of this fact, the prayer of the petitioner for implementation of the order dated 26th August, 1991 cannot be accepted.

5. So far as the other grievance that his juniors have been given the promotion after the said date, it is suffice to say that it is not the case of the petitioner that his case was not considered for promotion. However, admittedly he made a representation to the respondents in this respect. From the facts which have come on record of this special civil application, I find that the person

junior to him has been given the promotion on 23rd December, 1997. The petitioner has already made a representation against this promotion to the respondents and it is expected of the respondents to decide the representation of the petitioner within reasonable time say within two months from the date of receipt of certified copy of this order. In case the grievance of the petitioner is not accepted then a reasoned order may be passed and copy of the same may be sent to the petitioner by registered post.

6. The special civil application is dismissed summarily subject to the aforesaid direction.

(S.K. Keshote,J)

zgs/-